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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 360

J. STERLING HALSTEAD, *Petitioner,*

v.

REFINED SYRUPS & SUGARS, INC., *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is set forth in Petitioner's Appendix 1a-2a. There was no opinion of the United States District Court for the District of Columbia.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

1. Whether, within the contemplation of Supreme Court Rule 19, the United States Court of Appeals for the District of Columbia Circuit has decided an important State question in conflict with applicable State law or has sanctioned a departure by the United States District Court for the District of Columbia from the accepted and usual course of judicial proceedings requiring exercise of this Court's supervisory power.

2. Whether this cause of action attempting to establish a constructive trust, which is of interest only to the parties and involves only the evaluation of petitioner's complaint and other documents, the genuineness of which is admitted, is one of such significance or import as to require this Court's attention.

STATEMENT OF THE CASE

This is an action, filed in the United States District Court for the District of Columbia against an Ohio corporation qualified to do business in the District of Columbia, to establish a constructive trust and to prevent unjust enrichment. Upon full consideration of the pleadings, exhibits and answers to defendant's Requests for Admissions, the United States District Court for the District of Columbia granted respondent's Motion for Summary Judgment. (JA 2, 49). The United States Court of Appeals for the District of Columbia Circuit affirmed giving several alternative reasons therefor including, *inter alia,* that the claim was barred by the statute of limitations or laches and that

petitioner had no standing to sue as a third party beneficiary of an agreement of September 15, 1958, between Corn Products Refining Company, a New Jersey Corporation, (sometimes referred to hereinafter as "Corn Products") and R S & S Liquidating Corporation, formerly Refined Syrups & Sugars, Inc., a New York corporation (Petitioner's App. 1a-2a).

The undisputed facts supporting the summary judgment granted respondent are as follows: By virtue of an agreement dated January 21, 1957, between Corn Products Refining Company and Refined Syrups & Sugars, Inc. (New York),[1] Corn Products acquired all the assets of Refined Syrups & Sugars, Inc. (New York) the purchase price therefor being 128,288 shares of the common stock of Corn Products. One of the terms of acquisition was that Corn Products assumed certain specific liabilities and obligations of Refined Syrups & Sugars, Inc. (New York) and the Vendor agreed to indemnify and hold Corn Products harmless against all liabilities, obligations and claims not specified and so expressly assumed. (J.A. 15, 19, 40). Immediately following the acquisition, the Vendor changed its name to Refined Syrups & Sugars Liquidating Corporation. At the same time substantially all of the acquired assets and the assumed liabilities of the Vendor were passed by Corn Products to Refined Syrups & Sugars, Inc. (Ohio), the respondent herein, which by reason of having been a subsidiary of the Vendor had now become a subsidiary of Corn Products.

Petitioner, claiming to be an employee of respondent and of Refined Syrups & Sugars, Inc. (New York) at the time of the purchase and sale above detailed, filed

[1] Sometimes hereinafter referred to as "Vendor".

a claim on March 31, 1958, for retirement and severance benefits similar to those applicable to officers and employees. As this claim was not one of the liabilities or obligations assumed by Corn Products in the purchase agreement, it would, if required to be satisfied, have reduced the value of the assets acquired by Corn Products. Accordingly, the latter was entitled under the indemnity agreement to indemnification from the Vendor then named Refined Syrups & Sugars Liquidating Corporation, to the extent of the cost of satisfying petitioner's demand. (J.A. 4, 14, 19, 40).

As a result of negotiations in which petitioner participated, his claim was settled by an agreement dated October 1, 1958, between him and Refined Syrups & Sugars, Inc. (Ohio), respondent herein, then a Corn Products subsidiary (J.A. 16, 20). Under the terms of the agreement, petitioner was to serve as a consultant for a nine-year period receiving compensation at the rate of $12,000.00 per year or a total of $108,000.00. Prior to the execution of the foregoing consultant agreement, the Vendor then named Refined Syrups & Sugars Liquidating Corporation and Corn Products entered into an agreement of indemnification under date of September 15, 1958, by which the purchase price of the assets of the Vendor was adjusted by the return to Corn Products by the Vendor of 980 shares of Corn Products stock, part of the purchase price paid by Corn Products for Vendor's assets, because of the expense incurred in the settlement of petitioner's claim. (J.A. 14). After the lapse of nine years and his receipt of the full $108,000.00, petitioner filed suit claiming that Refined Syrups & Sugars, Inc. (Ohio) had been unjustly enriched because the market value of Corn Products stock had doubled in the intervening years.

ARGUMENT

I.

The Decision Below Is Clearly Correct; the Petitioner Has No Possible Cause of Action

In essence, petitioner's claim is that the decision below is wrong and resolves a question of New York law in conflict with the applicable state and general law. Respondent submits that the courts below were correct for any one of a number of reasons; summary judgment was properly entered either on the basis that under the undisputed facts, many of which are set out in the complaint, plaintiff's claim was barred either by the statute of limitations or laches, or by an accord and satisfaction or on the basis that no benefit was intended to be conferred upon respondent either for or by petitioner.

It has been stated that "the doctrine of unjust enrichment is equitable in its nature, and generally it is applied to permit a recovery where one person has received a benefit from another and the retention thereof would be unjust under some legal principle recognized in equity." *Rhode Island Hospital Trust Co.* v. *The Rhode Island Covering Co., Inc.*, 190 A.2d 219, 220-221 (R.I. 1963). Petitioner's claim must presuppose that the respondent received a benefit from him which would be inequitable for it to retain. *Herrmann* v. *Gleason*, 126 F.2d 936, 940 (6th Cir. 1942). In this case, respondent received no benefit which it should disgorge. It had incurred a substantial liability in the form of petitioner's claim for which its parent, Corn Products Refining Company, did not bargain and in connection with the settlement of which it was entitled to indemnity. Thereafter Corn Products made its claim for indemnification which was resolved by an agreement

with the Vendor. The indemnification need not have been in the form that it was, that is, 980 shares of Corn Products stock valued (at the time of its return) at approximately $45,080.00, and that stock might for all anyone knows at this time, have been sold immediately thereafter. It is beyond contradiction that had the price of Corn Products stock declined in the period following April 1, 1958, the respondent could not have escaped its obligation to pay petitioner $108,000.00. In other words the obligations of the parties were in no manner tied to the vagaries of the stock market. Indeed these payments to petitioner were to continue even after his death.

The authorities relied upon by the petitioner both in this Court and below offer no support to his position that he has stated a cause of action. Clearly, there was no intention to create a right in petitioner by the contract of September 15, 1958, whereby the purchase price paid by Corn Products for the assets of the Vendor was to be adjusted; to the contrary, this contract was solely for the benefit of Corn Products under its contractual right of indemnification in order to make an adjustment of the purchase price occasioned by petitioner's claim. Even if the contract of indemnification and the contract hiring the petitioner as a consultant were construed as a single agreement, petitioner's complaint still does not state a cause of action as the respondent did everything it was obligated to do, to wit, to pay the petitioner $108,000.00, the last payment having been made on March 1, 1967, two days before the action was filed.

Auerbach v. *Grand Nat. Pictures, Limited,* 29 N.Y.S. 2d 747 (Sup. Ct. 1941), cited by petitioner, merely re-

peats the unquestioned, that *Lawrence* v. *Fox* is still the law of New York and that unless established to the contrary New York courts will presume that it is the law of all common law jurisdictions. In *Beatty* v. *Guggenheim Exploration Co.*, 225 N.Y. 380, 122 N.E. 378 (1919), Mr. Justice Cardozo then speaking for the Court of Appeals stated that an agent's employer could orally waive a contract condition that the agent could not be interested in a similar business even though the employment contract provided that the contract could not be altered except by writing subscribed by the parties. What comfort this decision and *Grand Trunk Western R. Co.* v. *Chicago & Western Indiana R. Co.*, 131 F.2d 215 (7th Cir. 1942) offer petitioner is still obscure.

Petitioner's charge that respondent has been "unjustly enriched" merely questions the adequacy of consideration. However, throughout his brief petitioner ignores that even in the extraordinary case when fairness and adequacy of consideration are truly in issue these must be evaluated as of the time of the making of the contract; "... as to the time of the inadequacy, in order that it may ever be fatal, it must exist at the concluding of the contract. If there was no inadequacy at the making of the contract, none can arise from subsequent events or change of circumstances." *Pomeroy's Equity Jurisprudence*, 5th Ed. § 927, p. 638 (1941). See *In re Stevens' Estate*, 163 C.A. 2d 255, 329 P. 2d 337, 342, (2d Dist. App. Cal. 1958); *Pearson* v. *George*, 209 Ga. 938, 77 S.E. 2d 1, 6 (1953); *Dingler* v. *Ritzius*, 42 Idaho 614. 247 P. 10, 11 (1926).

Neither law nor equity supports petitioner. The undisputed facts are that the parties to the settlement of

petitioner's claim and the parties to the indemnification agreement received precisely what they had openly, informedly and fairly bargained for.

II.

There Are No Special and Important Reasons for Granting the Writ of Certiorari

Understandably, petitioner is unhappy with the result below. But his dissatisfaction does not lay a basis for exercise of this Court's jurisdiction even assuming, contrary to fact, that there was error below. The subject of the petition involves a matter of importance only to the particular litigants; it contains not an iota of general or national significance or interest.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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